

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 383 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UPENDRASINH A RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR SP HASURKAR for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1
NOTICE NOT RECD BACK for Respondent No. 2
MR CM KELLA for Respondent No. 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 06/11/96

ORAL JUDGEMENT

Rule.

The accused Nos. 1 to 6 in Criminal Case No.18 of 1996 on the file of the learned Metropolitan Magistrate of Court No.11, Ahmedabad have filed the

present petition under Section 482 of the Code of Criminal Procedure to quash the said prosecution. The marriage between the petitioner Upendrasinh A. Rajput and respondent No.4 Manishaben tookplace as per Hindu religious ritis on 23-5-1994. Thereafter,she joined the petitioner Upendrasinh Rajput at his house at Baroda and was dwelling with him till August 19, 1993. During this period, she has also conceived a child, but it is her claim that she was treated with cruelty by making dowry demand. Consequently she filed Criminal Case bearing No.151/94 & 152/94 for the offences punishable under Sections 403, 406 and 114 and offence punishable under Section 498 (A) of the I.P.C.and dowry case against her husband and his relatives in the court of Metropolitan Magistrate, Court No.11, Ahmedabad. In these cases the learned Metropolitan Magistrate ordered for carrying out investigation under Section 156 (3) of the Code of Criminal Procedure. But it seems that thereafter complainant Manishaben was induced to withdraw the said prosecution by disclosing to her that her ornaments will be returned to her and after her delivery she and her child will be taken back by her husband or he would make the necessary arrangements for her maintenance. Thereafter,Manishaben had also filed an application under Section 125 of Code of Criminal Procedure on 15th December,1994 as she found that her husband was not taking her back and was not also making provision of maintenance of herself and her child. In view of the inducement given to her, she had already informed the Magistrate that she does not wish to prosecute the said complaints lodged by her and the police be directed not to carry out the investigation and the learned Magistrate had disposed of the said cases as prayed by her.

2. In the proceeding taken by her under Section 125 of the Code of Criminal Procedure, there was an order of maintenance in her favour and she had also started executing the said order, and, thereafter, her husband filed a Marriage Petition bearing H.M.P.No.62/96 in the court of Civil Judge (S.D.), Vadodara, on 14-3-96 seeking a decree of divorce. The respondent No.4-complainant- Manishaben has lodged a private complaint on 19-3-96 in the Court of Metropolitan Magistrate, Court No. 11, Ahmedabad. In the said complaint,she has enumerated all the incidents of cruelty given to her which she had enumerated in her Criminal Case No.152 of 1994 and then she further added one more incident alleged to have been taken place on 17-3-96 by saying that on that day her husband and all his relatives had come to her place and they had abused her and threatened her that she should either pay Rs.50,000/- or

she should sign a divorce deed brought by them and they went away. This private complaint is lodged by her in the court on 19th March, 1996 and the learned Metropolitan Magistrate of Court No.11 of Ahmedabad was pleased to direct the police of Mahila Police Station to carry out the investigation under Section 156 (3) of the Code of Criminal Procedure. When the petitioners came to know about the same, they have come before this court and they are seeking quashing of the said order as well as criminal proceeding of Criminal Case No.18/96 pending in the court of Metropolitan Magistrate, 11th Court, Ahmedabad.

3. It is vehemently contended before me by the learned advocate for the petitioner that the complainant had already compromised the alleged incident of cruelty in her earlier Criminal Case No. 152/94 and consequently the present prosecution of Criminal Case No.18 of 1996 for the said acts of cruelty is not tenable. It must be mentioned that admittedly there was no recording of a compromise by the complainant and the accused as provided by the provisions of Section 320 of Cr.P.C. The offence punishable under Section 498 (A) is a non-compoundable offence, and hence no composition of the said offence can be recorded by any Magistrate. Then Sub Section 9 of Section 320 of the Code of Criminal Procedure clearly lays down that no offence shall be compounded except as provided by the said Section. Now in view of this statutory provision of Sub Section 9 of Section 320, the contention of Mr. Hasulkar, the learned advocate for the petitioner that there was earlier composition of the said offence of cruelty between the respondent No.4 Manishaben and the present petitioner could not be accepted. Therefore, in the circumstances, it will have to be held that there is no composition of the offence in question as per the provisions of the law.

4. Admittedly there was no trial of the present petitioner in the earlier prosecution. Therefore, there is no question of double jeopardy of the petitioners. There is no order of acquittal or order of discharge for the said offences in favour of the present petitioner so as to hold that the cognizance of the said offences in the second complaint could not be entertained. Therefore, in view of the above discussion the prosecution of the present petition in question could not be quashed.

5. But the legal question that is involved in the present proceeding is as to whether the Metropolitan Magistrate of Ahmedabad had the jurisdiction to take

cognizance of the first complaint as well as the second complaint. Admittedly the matrimonial house of the complainant- respondent No.4 Manishaben is in Vadodara and the incidents of cruelty as mentioned by the complainant in both the complaints except the alleged incident of 17th March, 1996 have taken place at Vadodara. When the offence has taken place at Vadodara merely because the complainant happens to reside within the jurisdiction of Metropolitan Magistrate Court on the date of the complaint, that fact cannot confer the jurisdiction on the Metropolitan Magistrate to take cognizance of the said offence. As regards, the alleged incident of 17th March, 1994, I will deal separately later on, but as regards the incident of cruelty as mentioned in the complaint of Criminal Case No.152 of 1994 as well as in the criminal case No.18/96 have taken place at Vadodra and consequently the Metropolitan Magistrate of Ahmedabad had no jurisdiction to entertain the said complaint and to take cognizance of the said complaint. Therefore, in view of the provisions of Section 201 of the Code of Criminal Procedure, the Metropolitan Magistrate ought to have returned the said complaint for presentation to proper court. In view of this aspect of jurisdiction also the earlier order of dismissal of the complaint passed by the Metropolitan Magistrate on account of the request of the complainant mentioning therein that there was compromise out of the court would be an order passed by the Magistrate who had no jurisdiction to pass any order. In that case, consequently, the said order cannot affect the legal rights of respondent No.4 Manishaben.

6. No doubt, in this complaint- criminal case No.18/96, the complainant has alleged about the alleged incident which was alleged to have been taken place on 17th March, 1996. It is stated by her in her complaint that on that day all the accused came to the house of the complainant and accused had demanded cash of Rs.50,000/-and had in the alternative suggested her to sign a stamp paper for giving divorce and that they had given filthy abuses and also threatened to kill. If the said averments made in the complaint are carefully read, then it would be quite clear that those averments are very vague. No timing of said incident is mentioned. It must be further mentioned here that already the relation between the complainant-respondent No.4 and the present petitioners were strained, respondent No.4 who had left her matrimonial house since August 1994, she had filed a proceeding under Section 125 of the Code of Criminal Procedure on 15th December, 1994. There was interim order of maintenance in her favour as well as in favour of the

child. Then the material on record also clearly shows that the husband had already filed a petition on 14th March, 1996 for getting a decree of divorce through the court. In the back ground of all these incidents and circumstances prevailing between the parties, no prudent man could ever believe that on 17th March, 1996, all the accused which consisting of the husband, in laws, sister in laws, sister in law's husband could go to her house and could committ the alleged incident. It is settled law that while considering the quashing of the proceeding, the court has to accept the averments made in the complaint by giving them face value, but in case,if the court finds that those averments made in the complaint could not be ever believed and accepted by any prudent man, then the said portion of the complaint will have to be quashed by the court by exercising the jurisdiction under Section 482 of the Code of Criminal Procedure.

7. Therefore, in view of the above discussion I hold that no cognizance could be taken by any court as regards the incident narrated by the complainant in her complaint alleged to have been taken place on 17th March, 1996. Therefore, that portion of the prosecution alleged by the respondent No.4- Manishaben will have to be quashed and set aside, but as regards her earlier claim of the earlier incidents of cruelty, the complaint of the complainant will have to be returned to her for presentation to the proper court under Section 201 of the Code of Criminal Procedure. I, therefore, partly allow the present petition as indicated above.

8. Thus, I hereby order that the portion of the complaint as regards the alleged incident of 17th March, 1996 stands quashed. The learned Metropolitan Magistrate of Court No.11 of Ahmedabad should make an endorsement of the quashing of the said portion as per the order of this court on the complaint and then issue a notice to respondent No.4-the original complainant and return the complaint to her for presentation to proper court under Section 201 of the Code of Criminal Procedure. Thus, the rule is made absolute accordingly.

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